

**From:** [Yacovone, Krista](#)  
**To:** [Hauge, Paul M.](#)  
**Subject:** RE: FOIA Request EPA-R2-2017-003521  
**Date:** Monday, April 30, 2018 2:31:00 PM  
**Attachments:** [RE Your clients' production of its 104\(e\) documents to EPA.msg](#)  
[AshlandISP's FOIA Request Relating to LCP Superfund Site.msg](#)

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Paul,

Yes, that is correct. Here is a summary of the interplay between your office's two FOIA requests, EPA-R2-2016-007137 & EPA-R2-2017-003521, and EPA's current request to you regarding EPA-R2-2017-003521:

Your office's prior FOIA request (EPA-R2-2016-007137) sought "all documents submitted by, or on behalf of, G-I Holdings Inc. or its related entities in response to EPA's [January 21,] 2016 Request for Information (including any supplemental or amended request) concerning the LCP Chemicals, Inc. Superfund Site in Linden, New Jersey." On April 6, 2016, G-I Holdings submitted its response to EPA's January 21, 2016 Request for Information, which included a 2-page cover letter, a 13-page "Responses and Objections" document, a 1-page Certification of Answers, and two sets of enclosures: (i) Addendums A (8 pages) & B (15 pages); and (ii) documents bates numbered G-I\_EPA0000001 through G-I\_EPA0021858. At the time G-I Holdings submitted its April 6<sup>th</sup> response, G-I Holdings asserted a claim of confidentiality over the information contained in Addendums A & B and documents bates numbered G-I\_EPA0000369 through G-I\_EPA0007017.

As mentioned in my March 2, 2017 email (attached), EPA issued a partial approval/partial denial letter to Adam Arnold on June 30, 2016, pursuant to which EPA produced the following records responsive to FOIA request EPA-R2-2016-007137: the 2-page cover letter, the 13-page "Responses and Objections" document, the 1-page Certification of Answers, and documents bates numbered G-I\_EPA0000001 through G-I\_EPA0000368, G-I\_EPA0006752 through G-I\_EPA0006778, and G-I\_EPA0007018 through G-I\_EPA0021858. (Note that G-I Holdings withdrew its claim of confidentiality over documents G-I\_EPA0006752 through G-I\_EPA0006778 because those documents are publicly available and were produced at G-I\_EPA00000213 through G-I\_EPA00000239.) The responsive records were uploaded to FOIAonline. The only responsive records that were withheld pursuant to the partial approval/partial denial letter were those responsive records containing information over which G-I Holdings asserted a claim of confidentiality: (i) Addendums A & B; (ii) documents G-I\_EPA0000369 through G-I\_EPA0006751; and (iii) documents G-I\_EPA0006779 through G-I\_EPA0007017.

EPA then began the confidential business information ("CBI") review process under 40 C.F.R. Part 2, Subpart B, pursuant to which EPA sent a CBI substantiation letter to G-I Holdings asking it to substantiate the above-referenced claims of confidentiality. G-I Holdings responded by letter dated July 22, 2016, over which it also claimed confidentiality because it discusses the grounds upon which G-I Holdings claimed confidentiality over the information contained in: (i) Addendums A & B; (ii) documents G-I\_EPA0000369 through G-I\_EPA0006751; and (iii) documents G-I\_EPA0006779 through G-I\_EPA0007017. The July 22, 2016 letter is 19 pages, and included Exhibits 1 (12 pages) & 2 (28 pages). Exhibits 1 & 2 are public court filings and are available at: (i) [In re G-I Holdings Inc.](#),

Case No. 01-30135 (RG) (Bankr. D.N.J.), Doc. No. 8735; and (ii) Ashland, Inc. v. The Samuel J. Heyman 1981 Continuing Trust for Lazarus S. Heyman, Case No. N15C-10-176 (EMD) (Del. Super. Ct.), Doc. No. 117.

Before EPA issued its final confidentiality determination, by email dated March 28, 2017 (attached), Camille Otero of your office withdrew FOIA request EPA-R2-2016-007137. Pursuant to 40 C.F.R. § 2.205, EPA was not required to make a final confidentiality determination after withdrawal of the request seeking information claimed to be CBI. However, records responsive to your current outstanding FOIA request EPA-R2-2016-003521 include the same information which G-I Holdings has claimed to be confidential, again triggering a requirement that EPA employ the CBI substantiation process and issue a final confidentiality determination. This information is contained in: (i) Addendums A & B; (ii) documents G-I\_EPA0000369 through G-I\_EPA0006751; (iii) documents G-I\_EPA0006779 through G-I\_EPA0007017; and (iv) G-I Holdings' 19-page July 22, 2016 CBI substantiation letter. If you do not withdraw the portion of FOIA request EPA-R2-2016-003521 relating to these documents, EPA will be obligated to again enter the CBI substantiation process and issue a final confidentiality determination, which will take additional time.

Hopefully this answers your questions. Please advise how you would like to proceed.

Thanks,

Krista

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New Jersey Superfund Branch  
U.S. Environmental Protection Agency, Region 2  
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(212) 637-3095

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**From:** Hauge, Paul M. [mailto:PHauge@gibbonslaw.com]  
**Sent:** Monday, April 30, 2018 1:43 PM  
**To:** Yacovone, Krista <yacovone.krista@epa.gov>  
**Subject:** RE: FOIA Request EPA-R2-2017-003521

Krista:

Following up on my e-mail below, with a slight correction – your March 2, 2017 e-mail seems to indicate that EPA withheld (as opposed to producing) 6,622 pages, i.e., that EPA produced 15,236 pages.

Thanks again.

**Paul M. Hauge, Esq.**

*Counsel, Environmental Law Department*

**GIBBONS P.C.**

(973) 596-4471

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**From:** Hauge, Paul M.

**Sent:** Friday, April 27, 2018 3:04 PM

**To:** Yacovone, Krista

**Subject:** RE: FOIA Request EPA-R2-2017-003521

Krista:

Apologies for the delay, but I need some clarification as to a couple of aspects of your e-mail. As I understand it, the documents covered by our prior FOIA request (EPA-R2-2016-007137), including, by definition all documents over which G-I asserted a claim of confidentiality, all fell within the Bates range G-I\_EPA0000001 to G-I\_EPA0021858. We are still checking our records to confirm that we have received that entire range of pages, whether from EPA or from G-I. Do you have a record of which Bates pages EPA produced to us? An e-mail from you dated March 2, 2017 notes that of the 21,858 pages, EPA produced 6,622 pages (G-I\_EPA0000369 to G-I\_EPA0006751 and G-I\_EPA0006779 to G-I\_EPA0007017).

The second item in your e-mail (the July 22, 2016 letter, including Exhibits 1-2) evidently falls outside of the above-referenced Bates range. Therefore, it would not have been produced in response to the FOIA Request EPA-R2-2016-007137, either by EPA or by G-I. Has G-I asserted a new claim of confidentiality over this document, in connection with our more recent FOIA request (EPA-R2-2017-003521)? How many pages does it cover?

Thanks.

**Paul M. Hauge, Esq.**

*Counsel, Environmental Law Department*

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**From:** Yacovone, Krista [<mailto:yacovone.krista@epa.gov>]  
**Sent:** Tuesday, April 17, 2018 3:41 PM  
**To:** Hauge, Paul M.  
**Subject:** FOIA Request EPA-R2-2017-003521

Paul,

This is to confirm our telephone conversation earlier today, during which you agreed to consult your client regarding withdrawal of a portion of your Freedom of Information Act (FOIA) Request No. EPA-R2-2017-003521 in light of the likelihood that you and/or your client already have the documents we discussed. If your client concurs, you would withdraw FOIA Request No. EPA-R2-2017-003521 as it relates only to the following communications from Andrew J. Rossman, Esq. of Quinn Emanuel Urquhart & Sullivan LLP on behalf of G-I Holdings Inc. to the U.S. Environmental Protection Agency: (1) the April 6, 2016 letter, including Addendums A & B as well as all enclosed documents bates numbered 00001-21858; and (2) the July 22, 2016 letter, including Exhibits 1-2.

Please let me know how to proceed.

Thank you,

Krista

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**From:** [Yacovone, Krista](#)  
**To:** ["Otero, Camille V."](#)  
**Cc:** ["Hatfield, William S."](#); ["Hauge, Paul M."](#)  
**Subject:** RE: Your clients' production of its 104(e) documents to EPA  
**Date:** Thursday, March 2, 2017 2:13:00 PM

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Hi Camille,

The bates range of documents produced by G-I Holdings, Inc. in response to EPA's January 21, 2016 104(e) Request for Information is G-I\_EPA0000001-G-I\_EPA0021858. This represents G-I Holdings' entire production, which you received in response to FOIA EPA-R2-2016-007137, excluding G-I\_EPA0000369-G-I\_EPA0006751 and G-I\_EPA0006779-G-I\_EPA0007017, which are still subject to G-I Holdings' CBI claim. (G-I Holdings withdrew its CBI claim as to G-I\_EPA0006752- G-I\_EPA0006778, since that document is publically available and was produced at G-I\_EPA00000213-G-I\_EPA00000239.)

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**From:** Otero, Camille V. [mailto:COtero@gibbonslaw.com]  
**Sent:** Wednesday, March 01, 2017 4:04 PM  
**To:** Yacovone, Krista <yacovone.krista@epa.gov>  
**Cc:** Hatfield, William S. <WHatfield@gibbonslaw.com>; Hauge, Paul M. <PHauge@gibbonslaw.com>  
**Subject:** FW: Your clients' production of its 104(e) documents to EPA

Krista:

We are in the process of negotiating an agreement with the G-I entities regarding the referenced subject matter. Can you please confirm the bates range of documents produced by G-I in response to the January 21, 2016 104(e) request for information that EPA sent to G-I? To be clear, we are looking for the bates range of the entire production, not just those documents that G-I marked as "confidential" and have been withheld the Ashland/ISP parties.

If you have any questions, please do not hesitate to contact us.

Thank you.

Camille

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**From:** Otero, Camille V.  
**Sent:** Thursday, February 23, 2017 10:15 AM  
**To:** Sylvia Simson  
**Cc:** Hatfield, William S.; Andrew J. Rossman; Jonathan Oblak; [yacovone.krista@epa.gov](mailto:yacovone.krista@epa.gov)  
**Subject:** Re: Your clients' production of its 104(e) documents to EPA

Sylvia:

We understand what you told us but experience has taught us that what you say and ultimately do are two different things. We will not put our clients through a month or so of fruitless negotiations over a simple agreement and numerous meet and confers to try to obtain documents to which we are already entitled. That being said, if we can reach an agreement by cob tomorrow that includes an acceptable date certain for production of documents, then there will be no need to burden EPA with this matter. However, if we do not have an agreement by cob tomorrow we will advise the Agency and request that EPA respond to our FOIA request and provide us with the documents we requested.

To be clear, this matter could have been avoided had your clients agreed to cooperate with our clients as we requested in the first instance. Your failure and refusal to cooperate and provide us with the documents to which we are entitled is the sole reason that the Agency is now in the middle of this issue. Any further burden placed on EPA stems from these acts and is in no way the fault of the Ashland Parties.

I have copied Krista on this email so that there is no misunderstanding as to what has transpired with respect to this matter.

Thank you.

Camille

Sent from my iPhone

On Feb 22, 2017, at 8:09 PM, Sylvia Simson <[sylviasimson@quinnemanuel.com](mailto:sylviasimson@quinnemanuel.com)> wrote:

Camille, as we have already told you that we are willing to come to an agreement, it is unclear to us why you continue to suggest that there is any need to unduly burden the EPA. We'll get you a draft agreement soon. Thanks.

**Sylvia Simson**  
Quinn Emanuel Urquhart & Sullivan, LLP

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**From:** Otero, Camille V. [<mailto:COtero@gibbonslaw.com>]  
**Sent:** Wednesday, February 22, 2017 6:24 PM  
**To:** Sylvia Simson <[sylviasimson@quinnemanuel.com](mailto:sylviasimson@quinnemanuel.com)>  
**Cc:** Hatfield, William S. <[WHatfield@gibbonslaw.com](mailto:WHatfield@gibbonslaw.com)>; Andrew J. Rossman  
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**Subject:** Re: Your clients' production of its 104(e) documents to EPA

Sylvia: thank you for the below response. We have been waiting for such a proposed agreement since we last spoke. Please provide us with a proposed agreement by cob tomorrow so we may review it with our client and provide comments if necessary. If we are unable to reach a resolution of this matter by cob on Friday, we will contact EPA and request that the Agency respond to our FOIA request and produce the documents we requested.

Thank you,

Camille

Sent from my iPhone

On Feb 22, 2017, at 5:07 PM, Sylvia Simson <[sylviasimson@quinnemanuel.com](mailto:sylviasimson@quinnemanuel.com)> wrote:

Camille, we already told you that we are willing to come to an agreement with you on this topic. As we previously discussed, our client is amenable to the production of such documents in the Delaware litigation, pursuant to the protective order issued by the Court in that case, provided that (1) the Ashland Parties similarly produce documents provided to the EPA in connection with any 104(e) request and (2) retract their demand for such materials from the EPA such that the EPA can close your pending FOIA request. We are also willing to come to an agreement regarding all parties' use of and reference to their respective productions in conversations with the EPA regarding the LCP Site, provided that none of these confidential documents are disclosed to or reproduced to any other third party without express consent given the confidentiality provisions contained therein. If we are in agreement as to the terms, we will draft a

short agreement to this effect for our clients' execution and can then advise Krista she can close out her case. Our document production will follow in short order and we expect that the Ashland Parties' productions will as well. Thank you.

**Sylvia Simson**

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**From:** Otero, Camille V. [<mailto:COtero@gibbonslaw.com>]

**Sent:** Tuesday, February 21, 2017 12:38 PM

**To:** Sylvia Simson <[sylviasimson@quinnemanuel.com](mailto:sylviasimson@quinnemanuel.com)>

**Cc:** Hatfield, William S. <[WHatfield@gibbonslaw.com](mailto:WHatfield@gibbonslaw.com)>

**Subject:** Your clients' production of its 104(e) documents to EPA

Sylvia:

When can we expect production of these documents?

If we do not have agreement on production by Friday, February 24, 2017, we will call EPA and request the immediate production of these documents from the Agency.

Thank you.

Camille

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<image001.jpg>

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**From:** [Otero, Camille V.](#)  
**To:** [Yacovone, Krista](#)  
**Cc:** [Hatfield, William S.](#); [Sylvia Simson \(sylviasimson@quinnemanuel.com\)](mailto:sylviasimson@quinnemanuel.com)  
**Subject:** Ashland/ISP's FOIA Request Relating to LCP Superfund Site  
**Date:** Tuesday, March 28, 2017 11:15:36 AM

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Krista: As it appears that we have received the requested 104(e) documents from counsel for the GAF/G-I Entities, Ashland/ISP withdraw their FOIA request, EPA-R2-2016-007137.

Thank you.

Camille

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